

Kentucky

Department of Workers' Claims

Annual Report
Fiscal Year 2000-2001



**Commonwealth of Kentucky
Department of Workers' Claims**

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Chief Administrative Law Judge
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Kentucky Department of Workers' Claims Mission Statement

**Resourceful administration of Kentucky's workers' compensation program
and equitable and expedient processing of claims.**

PERFORMANCE OBJECTIVES

- T**o assure prompt delivery of statutory benefits, including medical services and indemnity payments
- T**o provide timely and competent services to stakeholders
- T**o foster stakeholder knowledge of rights and responsibilities under the Workers' Compensation Act
- T**o encourage stakeholder involvement in the development of policy and delivery mechanisms
- T**o provide the public and policy makers with accurate and current indicators of program performance
- T**o anticipate changes in the program environment and respond appropriately

No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Labor Cabinet.

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This agency does not discriminate on the basis of race, color, national origin, religion, age or disability in employment or provision of services.



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The Honorable Paul A. Patton
Governor of the Commonwealth of Kentucky
Capitol Building
Frankfort, Kentucky 40601

Dear Governor Patton:

In accordance with KRS 342.230(2) and KRS 342.435, I have the privilege to submit to you the Annual Report of the Department of Workers' Claims for fiscal year 2000-2001.

The provisions of House Bill 992 became effective during this period. The elimination of the arbitrators and the re-instatement of the Workers' Compensation Board significantly impacted claims processing and the delivery of benefits. In addition, adjustments made to the laws governing claim re-openings resulted in a record-breaking number of motions filed at the end of the calendar year.

2000-2001 was also significant with respect to the number of injuries reported to the department. Even as Kentucky prospered with a rising number of workers, the number of reported work-related injuries was the lowest in a decade.

The department continues to work closely with business and labor, the legal arena, and the insurance and health care industries on ways in which to enhance the workers' compensation system.

We welcome your suggestions for continuous improvement as we move into a new era. With a focus on service and striving to provide a user friendly Department of Workers' Claims, we're excited about the ways in which we're building momentum to meet Kentucky's needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Ched Jennings".

Ched Jennings,
Commissioner



Charles Edward 'Ched' Jennings
Commissioner

Commissioner Jennings received his Bachelor of Arts in Political Science from the University of Kentucky in 1972 and his Juris Doctor in 1975 from the University of Louisville Brandeis School of Law.

From 1976-79 Mr. Jennings served as legal counsel to the Workers' Compensation Board.

In 1986, Jennings was appointed by Governor Martha Layne Collins to the Workers' Compensation Task Force Commission. The Commission was responsible for designing the administrative provisions of House Bill 1 which was primarily responsible for the design of the present Administrative Law Judge/Board system.

In 1988, the Commissioner founded CompEd Inc., a Kentucky non-profit corporation that conducts annual seminars on workers' compensation issues and publishes an annotated version of the statutes and administrative regulations.

In May of 2001, Mr. Jennings was appointed to serve as Commissioner of the Department of Workers' Claims.



Thomas 'Tick' Lewis
Deputy Commissioner

Deputy Commissioner Lewis has 25 years of experience in workers' compensation, safety and human resources.

He joined the Department of Workers' Claims staff from Cook and Sons Mining, where he was Manager of Human Resources and Safety.

Mr. Lewis received his M.A. in Education from Morehead State University in 1973.

Mr. Lewis then began a 20- year career in mining, serving as owner, safety inspector, examiner and as a manager of workers' compensation.

Beginning in 1994, the Deputy Commissioner served as a Kentucky Coal Association Representative to the Health Policy Board, where he worked on preparing the standard benefits plan for the Health Reform Act.

From 1997-2000 Mr. Lewis worked as an arbitrator with the Department of Workers' Claims.

Mr. Lewis is a member of several professional and labor organizations including the United Mine Workers of America and the Kentucky Coal Association.



a result of the injury, a lump-sum payment of \$50,000 (for injuries occurring after July 13, 2000) is made to the employee's estate. Income benefits are also extended to the surviving spouse and dependents.

The Department of Workers' Claims (DWC) within the Labor Cabinet administers Kentucky's workers' compensation program. The Commissioner is appointed by the Governor and is empowered to adopt regulations that implement the law, such as those that guide the adjudication of claims and the delivery of medical and rehabilitation benefits.

Kentucky's Workers' Compensation Program

The General Assembly establishes rights and duties regarding workers' compensation through statutes found in Kentucky Revised Statutes, Chapter 342—the Workers' Compensation Act.

Kentucky's Workers' Compensation Act provides benefits to employees injured in job-related accidents and to those who contract or develop diseases due to workplace exposure. In exchange for the protection that workers' compensation grants, employees surrender the right to sue employers in civil court for damages arising from workplace injuries.

Benefits include money payments for lost income, the expense of medical treatment and vocational rehabilitation training for new job skills. If an employee's death occurs as

Among DWC functions are the following:

- Provide information concerning benefits
- Maintain injury records and program costs
- Process and adjudicate claims
- Enforce laws requiring employer coverage
- Regulate self-insured employers
- Implement strategies to improve carrier performance
- Render program assessment to policy makers

Workers' Compensation Insurance Coverage

Most Kentucky employers are subject to the Workers' Compensation Act and must carry workers' compensation insurance either through purchase of a policy from an insurance carrier, by becoming self-insured or by joining a self-insurance group. The law imposes penalties on employers who fail to obtain coverage and non-complying businesses may be closed by court action.

Some employees are exempt from mandatory workers' compensation coverage. Farm workers and workers who are employed as domestic servants or employed by homeowners for residential maintenance and repair, members of certain religious sects and employees protected by federal laws are some of those exemptions. Those who voluntarily execute a waiver of workers' compensation protection are exempt from coverage; business partners who are owners of the business are not required to obtain coverage on themselves.

Temporary help service companies are deemed the employers of temporary employees and must secure workers' compensation insurance coverage.

Employees may reject coverage under the Workers' Compensation Act by signing and filing with the employer an Employee's Notice of Rejection of Workers' Compensation Act, commonly known as a Form 4 Waiver. By rejecting the Act,

Whether a worker is an employee or an independent contractor is a frequently disputed issue in workers' compensation claims. The general test to determine this distinction usually is found in the following question: *Does the worker have the right to control the details of the work?*

Employee leasing corporations must register with the Department of Workers' Claims and demonstrate that workers' compensation coverage has been secured for job sites where leased employees work.

employees surrender benefits that may be due under the Workers' Compensation Act, but retain the right to sue employers for work-related injury or disease in civil court.

The law prohibits employers from requiring employees to sign a Form 4 Waiver as a condition of employment. Only waivers signed freely by the employee will be upheld.

Resolution Of Disputes

When an employee is injured on the job, the employee notifies his/her employer of the injury as soon as possible. The employer, in turn, notifies its insurance carrier if the employer is not self-insured. This notification process alerts the employer and/or insurance carrier of its potential liability and the need to begin payments to the employee. Medical benefits are then frequently started as well as income benefits. So long as these benefits continue to be voluntarily paid, there may be no dispute or need for an employee to file a

condition is due to a work injury, challenging the extent of disability, or whether medical expenses are reasonable or necessary. The employee may also feel entitled to a larger award than the employer thinks is justified. Where there is a disagreement, either party may contact the Department of Workers' Claims ombudsmen or workers' compensation specialists for intervention.

The primary mission of the DWC is to expeditiously resolve disputes as to entitlement to workers' compensation

benefits. A toll free number **(1-800-554-8601)** is available to all parties for information and assistance in resolving these matters. Staff members contact the parties involved, help with the exchange of information or medical documents and also engage all parties in discussions aimed at resolving the disagreement.

If the differences cannot be resolved either with the assistance of DWC staff or by the parties, litigation may ensue. In filing a claim, many workers retain an attorney, familiar with workers' compensation law, to handle the

complexities of the adjudication process.

workers' compensation claim. In many instances, the injured worker and the employer reach an agreement which is formalized and approved by one of the administrative law judges at the department.

In other instances, there may be a disagreement by either party on the amount of or entitlement to benefits. The employer may contest payments of these benefits, challenging whether the employee's

An employee is not required to have an attorney to file a claim. However, employees choosing to represent themselves will be held to the same standards as members of the bar. For those workers who obtain an attorney, fees for representation are on a contingency basis and recovery of benefits is required before fees are payable.



Attorney Fees Awarded During FY 2001

	Number of Fees Approved	Total Fees Awarded	Average Fee
Plaintiff	4,510	\$15,813,386	\$3,506
Defense	3,931	\$ 9,702,902	\$2,468

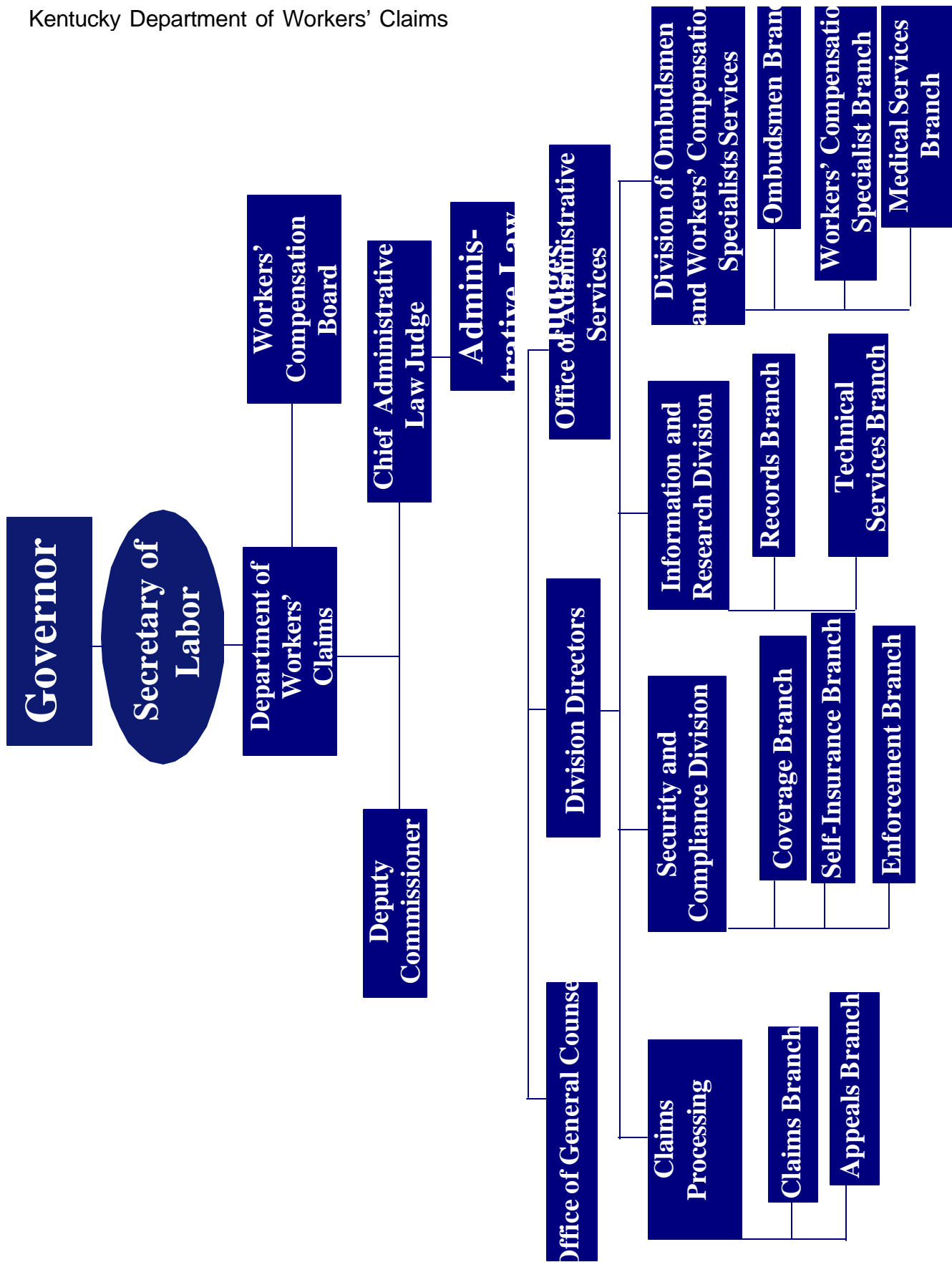
The Department of Workers' Claims processes a variety of injury and occupational disease claims. To simplify the administrative procedure, several types of claim application forms are used; Form 101 for injuries, Form 102 for occupational diseases and Form 103 for hearing loss claims. These claim application forms contain basic information identifying the worker, employer and the nature of the incident producing the injury/disease and must be thoroughly completed, typed, notarized, and filed with supporting medical documentation with the Department. Additional forms must also be completed and filed with the claim application: Form 104, Plaintiff's Employment History; Form 105, Plaintiff's Chronological Medical History; and Form 106, Medical Waiver and Consent. In occupational disease claims, the Form 115, Social Security Release Form is also required. All of these forms are available by telephoning the Department of Workers' Claims or can be downloaded from the agency's website: **dwc.state.ky.us**.

Once a claim is filed, it is assigned to an Administrative Law Judge. These judges have responsibility for overseeing all aspects of the claim including the

introduction of evidence and ruling on all pleadings. If the claim is not settled, the judges will render a decision on all uncontested issues.

To assist in understanding how the administrative judicial process works, the Adjudication Timeline contained within this report (pages 54-55) outlines the steps involved.





P R O G R A M



S T A T I S T I C S

First Reports Of Injury

Kentucky Revised Statute 342.038 mandates that employers keep a record of all workplace injuries received by employees. Employers must file a First Report of Injury with the Department of Workers' Claims when more than one day of lost work occurs. This report must be filed within one week after learning of the injury. Kentucky employers who fail to comply with this requirement are subject to the penalty provisions of KRS 342.990.

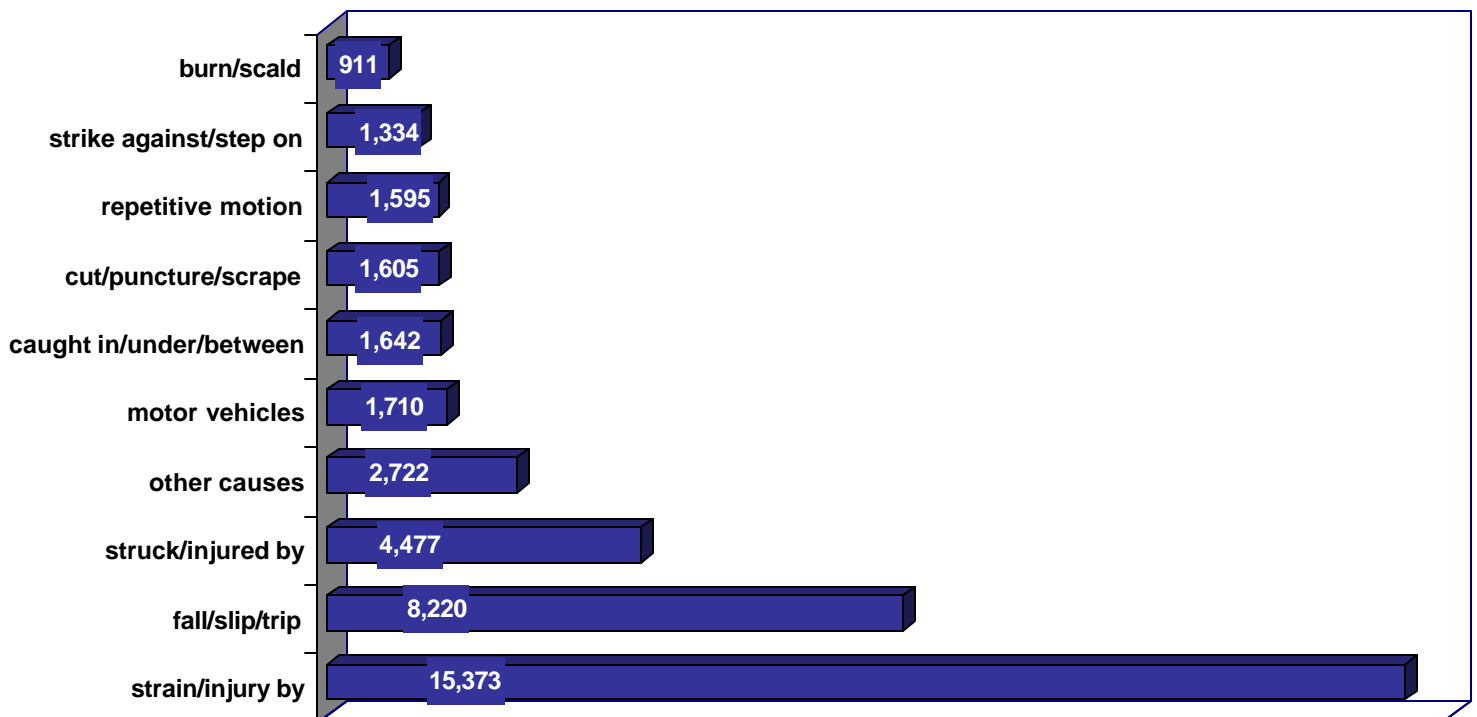
In fiscal year 2000-2001, there were 39,589 lost time First Reports of Injury filed with the Department (meaning that these injured workers missed more than one day of work). While the number of lost time injuries have

declined in recent years, this is the lowest number of injuries reported to DWC in the past decade.

The most common work-related injury in FY 2000-01 was caused by strain; there were 15,373 workers injured in this manner and most of the strains reported were a result of lifting. Falls/slips/trips followed as the second most common cause with 8,220 reported; almost 1,500 of the falls/slips/trips were same level incidents.

Injuries caused by being struck or injured by an object totaled 4,477; almost 2,000 of these were a result of being struck/injured by a falling/flying object. Motor vehicle

DISTRIBUTION OF LOST TIME INJURIES BY CAUSE OF INJURY



Distribution Of Lost Time Injuries By Type

Hearing Loss	134
Coal Workers' Pneumoconiosis	123
Occupational Disease	1,358
Injury	37,974

There were 1,642 injuries caused by workers getting caught in, under or between, with 561 of these injuries involving machinery. Cuts, punctures and scrapes were reported by 1,605 workers. Almost half of these injuries (a total of 772) were cuts, punctures and scrapes involving tools/utensils.

Repetitive motion was the cause of injuries reported by 1,595 workers. There were 1,334 reports of injuries caused by striking against/stepping on and there were 911 reports of injuries caused by burns and/or scalds.

Miscellaneous causes of injuries totaled 2,722 and included such things as foreign objects in the eye (495 reports), absorption/ingestion/inhalation (527 reports) and animal or insect bites (280 reports).

Criminal assault was also included in the miscellaneous causes of injury category; there were 106 incidents reported.

Review of the nature of injuries revealed that sprains (there were 16,500 reported) and strains (3,038 reported) accounted for nearly half of all injuries. Contusions/bruises were reported in 4,744 injuries; there were 2,744 fractures and 2,484 lacerations reported.





There were 3,728 injuries reported by the construction industry; the area of plumbing, heating and air conditioning incurred the highest number of injuries (544).

In the transportation/communication/public utilities sector, there were 3,406 injuries; almost half of these (1,539) occurred within motor freight and warehousing.

The mining industry reported 2,295 injuries, the majority of which were coal mining -- both surface and underground (2,148).

The public administration sector reported 2,071 injuries; 1,404 of which were within the executive, legislative and general government division. Wholesale trade reported 1,434 injuries, half of which were from non-durable goods (741).

Agriculture, forestry and fishing reported a total of 485 injuries; 181 of which were incurred within the landscape/horticultural services division.

The distribution of lost time injuries by standard industrial classification (sic) codes was similar to those reported last fiscal year.

Manufacturing reported 9,977 injuries; there were 1,883 injuries incurred in the manufacture of transportation equipment. The services sector reported 9,766 injuries; one third (3,763) of which were from the health services division. Retail trade reported 5,559 injuries; one third of these injuries (1,896) were from eating and drinking establishments.

There were 454 injuries reported by the finance/insurance/real estate sector; 216 of which occurred within the division of real estate.

There were a total of 414 injuries reported as unclassified.

Workers' Compensation Claims

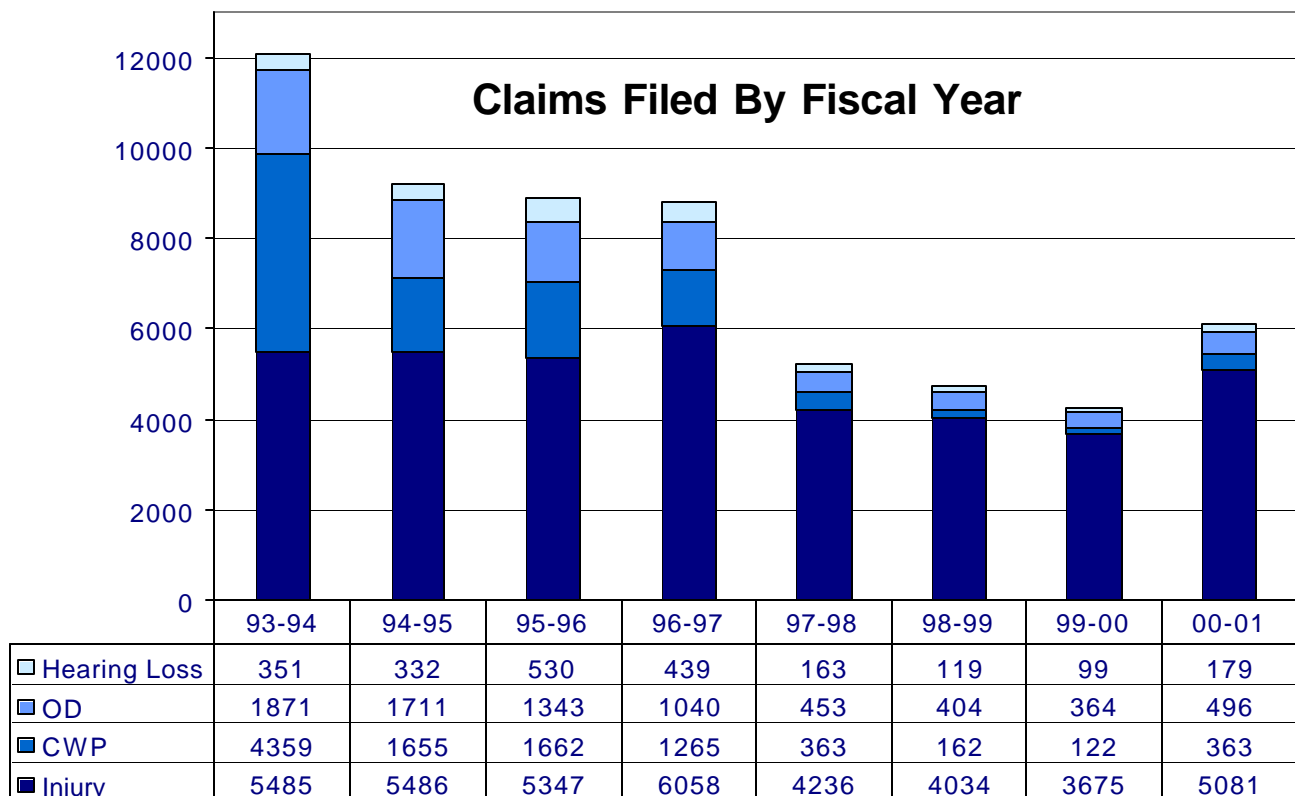
A workers' compensation claim in Kentucky originates when: 1) A settlement document is filed to voluntarily resolve workers' compensation issues between parties; or 2) a claim application is filed because the parties are not in agreement and the matter must be resolved by an Administrative Law Judge.

Workers' compensation claims are typically **divided into two types, indemnity and medical-only**, a distinction that is used in this report. Indemnity claims are those for which income benefits are paid to compensate for lost wages, functional impairment or death. Medical service costs are paid in addition to income payments.

Most of the data in this report pertains to indemnity claims. Presently, there is no statutory requirement that employers or their insurance carriers report medical-only injuries to DWC.

For an injury to be compensable, it must be caused by the employee's work. To be considered for temporary total income benefits, an injured worker must miss more than seven days of work. Medical-only claims are those where medical services are delivered but the employee does not qualify for income payments.

In FY 2001 there were 6,119 requests for resolution of claims filed with the Department of Workers' Claims. This represents an increase from FY 2000, due in part to the December 2000 deadline for reopenings.



Fiscal year is July 1 through June 30

CWP includes Black Lung and Dust Disease Not Otherwise Classified

OD includes carpal tunnel syndrome

Distribution of Claims by Body Part

Multiple Body Parts Including Systems and Parts	1033
Spinal Cord	329
Wrist	255
Shoulder	254
Multiple Upper Extremities	158
Soft Tissue	116
Multiple Trunk	107
Lungs	86
Upper Arm	86
Upper Back	76
Multiple Lower Extremities	62
Soft Tissue	45
Thumb	29
Multiple Head Injury	26
Pelvis	19
Upper Leg	18
Skull	16
Sacrum	10
Vertebrae	9
Toes	8
Wrist and Hand	8
No Physical Injury	7
Nose	7
Multiple Neck Injury	6
Mouth	3
Teeth	1



In reviewing the litigated injury claims, DWC found that strain was the most common cause of injury, a total of 2,440. Fall or slip (1,175) was the second most common cause of injury. Injuries caused by being struck by an object totaled 552 and 380 claims involved motor vehicle accidents.

The average age of claimants was 41 years. 32% (1,908) of claims were filed by women and 68% (4,211) were filed by men.

Men filed the majority of claims in all standard industrial classification

categories except retail trade, finance/insurance/real estate and services.

Workers employed in the mining industry filed the greatest number of claims (1,435), followed by manufacturing (1,386) and services (1,055).

The distribution of claims by occupation code mirrored the last fiscal year. Mining machine operators filed the largest number of claims (548), followed by laborers (510) and truck drivers (396).

Reopenings

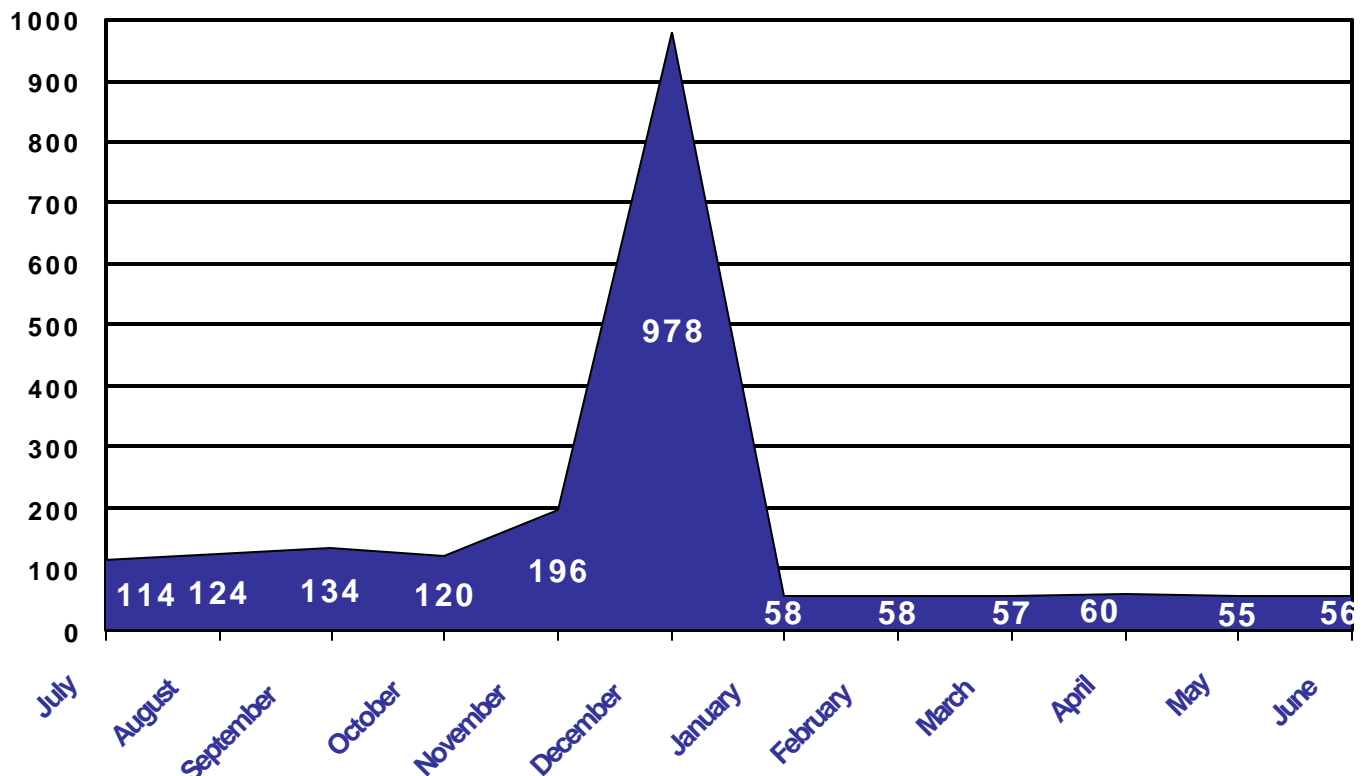
A final settlement or award in a workers' compensation claim is generally subject to a "motion to reopen".

Pursuant to House Bill 1, December 12, 2000, marked the last opportunity for claims with decisions rendered prior to December 12, 1996, to be submitted for re-opening. KRS342.125 (8) reads in part "claims decided prior to December 12, 1996 may be re-opened within four years of the award or order or within four years of December 12, 1996, whichever is later..."

Prior to the implementation of HB1, claimants were allowed an unlimited time to re-open.

The chart below illustrates the drastic increase in the number of motions to re-open received by DWC as a result of the December 12th deadline. The volume received in December closely rivals the number received during the entire previous calendar year.

Distribution of Reopenings by Month



Duplicate motions belonging to the same case file have been omitted from the above count

A Comparison by County
Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	%of FROIs to Labor Force	Claims	% of Claims to FROIs
Adair	7,582	135	1.78%	11	8.15%
Allen	8,620	117	1.36%	9	7.69%
Anderson	10,110	179	1.77%	21	11.73%
Ballard	4,331	83	1.92%	10	12.05%
Barren	18,715	411	2.20%	27	6.57%
Bath	6,002	115	1.92%	19	16.52%
Bell	10,463	323	3.09%	89	27.55%
Boone	46,973	568	1.21%	45	7.92%
Bourbon	10,215	233	2.28%	23	9.87%
Boyd	22,351	489	2.19%	94	19.22%
Boyle	15,283	283	1.85%	28	9.89%
Bracken	3,820	82	2.15%	7	8.54%
Breathitt	4,270	153	3.58%	44	28.76%
Breckinridge	7,873	121	1.54%	17	14.05%
Bullitt	34,994	587	1.68%	70	11.93%
Butler	5,944	113	1.90%	14	12.39%
Caldwell	6,528	108	1.65%	18	16.67%
Calloway	17,761	268	1.51%	16	5.97%
Campbell	46,405	457	0.98%	52	11.38%
Carlisle	2,786	30	1.08%	2	6.67%
Carroll	5,271	131	2.49%	9	6.87%
Carter	11,701	204	1.74%	38	18.63%
Casey	6,732	142	2.11%	19	13.38%
Christian	28,994	457	1.58%	37	8.10%
Clark	16,941	387	2.28%	43	11.11%
Clay	7,344	248	3.38%	105	42.34%
Clinton	6,179	80	1.29%	5	6.25%
Crittenden	4,060	92	2.27%	13	14.13%
Cumberland	3,047	66	2.17%	4	6.06%
Daviess	50,364	804	1.60%	77	9.58%
Edmonson	5,114	83	1.62%	13	15.66%
Elliott	2,664	29	1.09%	7	24.14%
Estill	5,679	135	2.38%	19	14.07%
Fayette	146,703	1,931	1.32%	249	12.89%
Fleming	6,425	132	2.05%	10	7.58%
Floyd	13,512	596	4.41%	264	44.30%
Franklin	25,132	410	1.63%	51	12.44%
Fulton	3,282	46	1.40%	4	8.70%
Gallatin	3,820	67	1.75%	7	10.45%
Garrard	7,915	182	2.30%	19	10.44%
Grant	10,442	252	2.41%	32	12.70%
Graves	17,553	282	1.61%	32	11.35%
Grayson	12,658	257	2.03%	24	9.34%
Green	4,124	85	2.06%	10	11.76%
Greenup	16,578	223	1.35%	36	16.14%
Hancock	4,150	87	2.10%	10	11.49%

A Comparison by County
Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	%of FROIs to Labor Force	Claims	% of Claims to FROIs
Hardin	37,383	749	2.00%	81	10.81%
Harlan	9,211	411	4.46%	224	54.50%
Harrison	7,384	178	2.41%	20	11.24%
Hart	7,871	184	2.34%	15	8.15%
Henderson	24,229	425	1.75%	38	8.94%
Henry	7,190	190	2.64%	24	12.63%
Hickman	2,462	22	0.89%	3	13.64%
Hopkins	19,513	584	2.99%	69	11.82%
Jackson	7,569	122	1.61%	25	20.49%
Jefferson	386,243	6859	1.78%	930	13.56%
Jessamine	21,451	396	1.85%	39	9.85%
Johnson	9,168	265	2.89%	96	36.23%
Kenton	81,298	897	1.10%	123	13.71%
Knott	5,829	151	2.59%	84	55.63%
Knox	11,360	253	2.23%	55	21.74%
Larue	6,397	115	1.80%	14	12.17%
Larurel	23,296	439	1.88%	88	20.05%
Lawrence	5,581	114	2.04%	44	38.60%
Lee	2,565	54	2.11%	18	33.33%
Leslie	4,349	203	4.67%	126	62.07%
Letcher	8,119	316	3.89%	113	35.76%
Lewis	4,339	100	2.30%	10	10.00%
Lincoln	11,564	284	2.46%	29	10.21%
Livingston	5,036	87	1.73%	15	17.24%
Logan	13,220	163	1.23%	20	12.27%
Lyon	3,388	57	1.68%	11	19.30%
McCracken	34,168	426	1.25%	83	19.48%
McCreary	6,330	115	1.82%	15	13.04%
McLean	4,411	102	2.31%	10	9.80%
Madison	37,204	595	1.60%	69	11.60%
Magoffin	5,113	134	2.62%	53	39.55%
Marion	11,150	184	1.65%	24	13.04%
Marshall	14,832	249	1.68%	33	13.25%
Martin	3,135	185	5.90%	124	67.03%
Mason	8,310	128	1.54%	7	5.47%
Meade	11,111	159	1.43%	12	7.55%
Menifee	2,976	63	2.12%	10	15.87%
Mercer	11,226	222	1.98%	27	12.16%
Metcalfe	4,815	100	2.08%	7	7.00%
Monroe	5,109	122	2.39%	10	8.20%
Montgomery	12,959	272	2.10%	34	12.50%
Morgan	4,884	99	2.03%	17	17.17%
Muhlenberg	12,555	326	2.60%	38	11.66%
Nelson	19,432	405	2.08%	68	16.79%
Nicholas	2,750	106	3.85%	9	8.49%

A Comparison by County
Labor Force, Lost Time First Reports of Injury (FROI) and Litigated Claims

County	Total Labor Force	FROIs	%of FROIs to Labor Force	Claims	% of Claims to FROIs
Ohio	9,711	241	2.48%	27	11.20%
Oldham	25,951	294	1.13%	38	12.93%
Owen	4,394	78	1.78%	9	11.54%
Owsley	1,735	40	2.31%	5	12.50%
Pendleton	6,794	116	1.71%	16	13.79%
Perry	11,377	408	3.59%	181	44.36%
Pike	26,725	1148	4.30%	591	51.48%
Powell	6,318	158	2.50%	22	13.92%
Pulaski	26,673	732	2.74%	82	11.20%
Robertson	1,018	10	0.98%	1	10.00%
Rockcastle	6,211	154	2.48%	21	13.64%
Rowan	9,836	188	1.91%	13	6.91%
Russell	5,812	120	2.06%	19	15.83%
Scott	18,520	382	2.06%	33	8.64%
Shelby	18,504	290	1.57%	26	8.97%
Simpson	8,702	224	2.57%	7	3.13%
Spencer	5,762	134	2.33%	21	15.67%
Taylor	9,243	197	2.13%	31	15.74%
Todd	5,374	76	1.41%	7	9.21%
Trigg	5,962	91	1.53%	3	3.30%
Trimble	3,201	60	1.87%	10	16.67%
Union	6,036	167	2.77%	29	17.37%
Warren	50,695	880	1.74%	62	7.05%
Washington	6,140	89	1.45%	11	12.36%
Wayne	8,449	178	2.11%	13	7.30%
Webster	5,414	192	3.55%	17	8.85%
Whitley	14,358	406	2.83%	47	11.58%
Wolfe	3,300	80	2.42%	14	17.50%
Woodford	13,758	193	1.40%	17	8.81%
Out of State		2390		29	1.21%
Total	1,981,868	39,589	2.00%	6,119	15.46%
Women	857,000	14,181	1.65%	1,905	13.43%
Men	1,124,868	25,188	2.24%	4,206	16.70%

Work-Related Fatalities

Initially, there were 94 on the job fatalities reported to the Department of Workers' Claims in fiscal year 2000-2001. After investigation, 45 of these deaths were determined to be work-related; the remainder have either been ruled not work-related, not a Kentucky claim, or there are issues which are still in a pending status.

The total of on the job fatalities for 2000-2001 represents a decrease from the 62 fatalities that occurred during last fiscal year. Based on a recent US Labor Department report, the number of workers nationwide killed on the job last year dropped about 2%.

In Kentucky last year, the youngest worker who died on the job was a 15-year old boy who was driving a golf cart that went out of control. The oldest worker who died on the job was an 89-year old man who was driving a funeral home limousine when the vehicle struck a tree.

Four of the fatalities involved workers who were 19 years old; two were killed while fighting a fire, one was shot to death at the drive through window of his place of employment and one was suffocated when he fell through a bin loaded with sand.

The average age of these workers killed on the job was 38. Forty-four of the fatalities were men; the sole woman who was killed on the job was a temporary worker who was shot more than ten times by a co-worker.

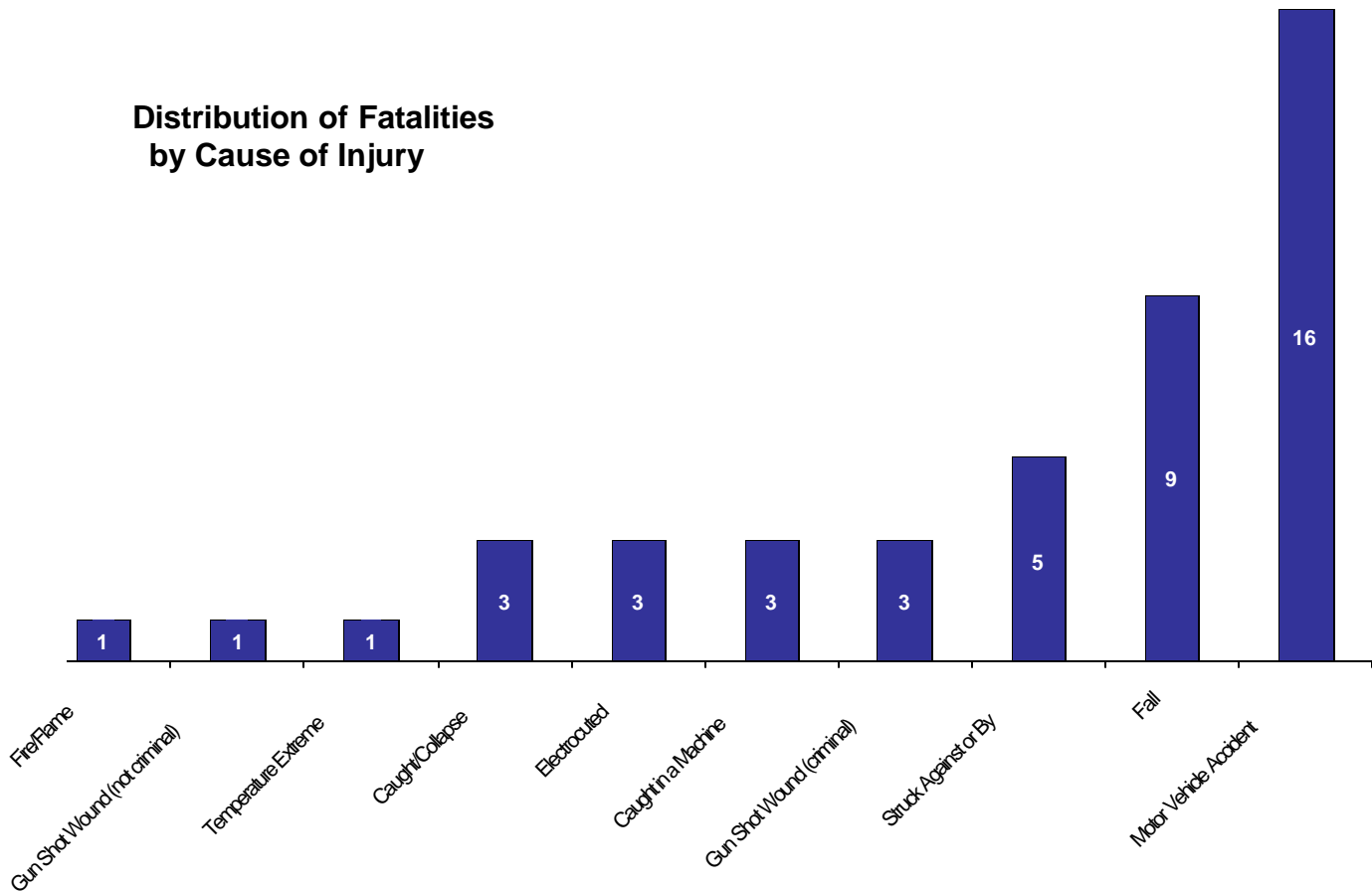
The most common causes of injuries incurred were the result of motor vehicle accidents (16) and falls (9). Six workers were killed when they were caught either by



Photo Courtesy of News Enterprise, Elizabethtown.

a machine or by falling debris (rock, dirt, sand). Five fatalities occurred when the worker was struck by or struck against moving parts or objects. Three fatalities were the result of gun shot wounds inflicted during the course of a crime.

Distribution of Fatalities by Cause of Injury



According to the US Labor Department's recent report, motor vehicle accidents were the leading cause of deaths of workers across the country. Deaths from falls and homicides increased nationally as well as in Kentucky; compared to last fiscal year, there was an increase in the number of falls (3) and homicides (2) in Kentucky during this reporting period.

Occupations of these workers ranged from attorney to welder, farm worker to engineer, bus driver to painter. Ten of the workers killed on the job were machine operators; seven were construction workers and five were motor vehicle drivers.

Nationwide, among industries, construction again had the highest number of fatal work injuries. This was mirrored in Kentucky,

where the construction industry claimed nine lives. Manufacturing and the services sectors each claimed seven lives; the mining industry reported five fatalities, as did the public administration sector.

Unlike last fiscal year, when all but one of the injured workers died on the day of the accident, one-fifth of 2000-2001 accident victims were not killed instantly. Three workers lived one day past the date of their accidents; two workers lived three days after a heat stroke and a fall from a ladder; and two other workers lived four and five days after falls. A sawyer struck in the chest by a board from the saw he was operating survived 14 days and a heavy equipment operator who fell from a bulldozer lived 17 days past the date of his accident.

Program Performance



The Department of Workers' Claims strives to deliver expedient and efficient services to the constituency.

Through technological advances and an attitude of working smarter, the Department of Workers' Claims is dedicated to meeting the unique challenges of Kentucky's workers' compensation program environment.

Approximately 50% of DWC's personnel are involved solely in the processing of benefit claims. Roughly 25% of the staff are involved in constituent services, vocational rehabilitation services, insurance compliance, legal services and administration. The remaining staff is assigned to data entry and other computer related services.

Fiscal Performance



The Department of Workers' Claims receives 100% of its funding from a special fund assessment imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers and against the simulated premium of every employer carrying its own risk.

Initially established in 1987, this assessment was divided into two parts; one rate for *all* employers and an additional assessment rate for those employers engaged in the severance and processing of coal.

The "all employer" assessment rate was set at 23.3% in 1987 and has experienced periodic declines over the past 13 years. It is currently holding at 9%. The additional "coal employer only" assessment rate, initially set at 40%, was abolished on December 12, 1996 with the passage of House Bill 1.

Current funding is derived solely from the remaining "all employer" assessment of 9% effective for premiums written through December 31, 2001. Any changes to the assessment rate must be recommended to the General Assembly not later than October 31 of the year prior to each regular legislative session.

DWC FISCAL HISTORY

FISCAL YEAR	PERSONNEL CAP	PERSONNEL ACTUAL	BUDGET ALLOTMENT (\$)	ACTUAL EXPENDITURES (\$)	DIFFERENCE (\$)	PERCENT of BUDGET EXPENDED
2000-2001	242	208	14,942,300	12,716,927	(2,2258,373)	85.1%
1999-2000	268	207	15,637,000	12,387,288	(3,249,712)	79.2%
1998-1999	268	208	14,994,000	12,606,188	(2,387,812)	84.1%
1997-1998	272	227	15,182,500	12,588,527	(2,593,973)	82.9%
1996-1997	272	229	12,137,900	11,057,391	(1,080,509)	91.0%
1995-1996	207	138	9,822,200	9,479,970	(342,230)	96.5%
1994-1995	210	120	9,757,200	8,586,716	(1,170,484)	88.0%
1993-1994	167	159	7,860,000	7,337,688	(522,312)	93.4%
1992-1993	167	160	7,505,100	7,004,561	(500,539)	93.0%
1991-1992	153	150	6,901,600	6,497,815	(403,785)	94.0%
1990-1991	155	149	6,737,300	6,487,540	(249,760)	96.0%
1989-1990	139	136	5,695,100	5,295,835	(399,265)	93.0%
1988-1989	132	123	6,031,200	4,951,309	(1,079,891)	82.0%

Workers' Compensation Board



Dwight T. Lovan, Chairman

Board chairman Dwight T. Lovan received his Bachelor's degree from Baylor University and J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1977, Judge Lovan worked as a staff attorney for the Kentucky Court of Appeals with responsibility for workers' compensation appeals for 15 months. From 1979 to 1990 he practiced law in Owensboro, concentrating in the areas of workers' compensation and civil litigation.



John Anthony Gardner

Board Member John A. Gardner graduated from Western Kentucky University in 1971 and received his J.D. from the University of Kentucky in 1974.

Judge Gardner served on the district court bench for the 24th Judicial District from 1979-1991 and again from January 2000 to June 2000. He was elected to the Kentucky Court of Appeals in 1991 and served an eight-year term. In July of 2000, Judge Gardner was appointed to the Workers' Compensation Board.



Jonathan Stanley

Board member Jonathan Stanley received his Bachelor of Arts degree from Morehead State University in 1978 and a Masters Degree in international economics and political science from the University of Kentucky in 1979. He received his J.D. from the University of Kentucky College of Law in 1982.

While in law school, Judge Stanley worked as a law clerk for the Special Fund. From 1983 - 1997, he was a partner in the firm of Wilson and Stanley in Lexington. Judge Stanley was appointed to the Kentucky Workers' Compensation Board in 1999.

Administrative Law Judges



Sheila C. Lowther
Chief Administrative Law Judge

Sheila C. Lowther graduated cum laude from Transylvania University in 1977. She received an English Speaking Union Fellowship and attended the University of London. She received her J.D. from the University of Kentucky in 1980.

Judge Lowther was in private practice, focusing on workers' compensation in Madisonville, Kentucky from 1980 through 1995. She was appointed an Administrative Law Judge for the Kentucky Department of Workers' Claims in 1995 and since January 1999, has served as Chief ALJ.

During the 2000-2001 fiscal year, there were a total of seventeen administrative law judges (ALJs). These judges have offices in Covington, Danville, Frankfort, Fulton, Henderson, Lexington, Louisville, Mt. Sterling, Pikeville, Pineville, and Richmond. In addition, there are hearing sites in Ashland, Bowling Green, Hazard, London, Madisonville, Owensboro and Paducah.

The ALJs held 5,696 informal conferences. During these informal conferences, they presided over settlement negotiations, ruled on evidentiary disputes, and identified contested issues. During this period, the ALJs also held 2,731 formal hearings. 2,669 opinions were issued in these claims. They also issued 149 decisions in claims on remand from the Workers' Compensation Board, the Court of Appeals and the Kentucky Supreme Court.

The table below indicates the volume of claims hearing activity, based on the 6,119 claims assigned and received during fiscal year 2000-2001.



Distribution of Claims Filed by Hearing Location

Ashland	274	Louisville	1385
Bowling Green	210	Madisonville	189
Covington	311	Owensboro	191
Hazard	558	Paducah	222
Lexington	836	Pikeville	1129
London	498	Pineville	316

Claims Processing



Within the Division of Claims Processing, under the supervision of Division Director Ora Burge, the Claims Processing Branch receives and processes applications for resolution of claims and assigns claims to administrative law judges.

The Appeals Branch, headed by Dianna Rose, is responsible for the processing of appeals to the Workers' Compensation Board. The Branch also prepares the record for appeals to the Kentucky Court of Appeals and the Kentucky Supreme Court.

Claims Branch

The Claims Branch is comprised of several sections: Claims Assignment, Docket, Case Files and Open Records sections. The branch is charged with the responsibilities of receiving and processing all Applications for Resolution of Claims, scheduling Benefit Review Conferences, the assignment of claims to the Administrative Law Judges (ALJs), and scheduling court reporters for ALJs. The branch prepares the Frankfort motion docket, attends the docket meetings to record the rulings, processes the docket's orders, routes claim files and documents, and disseminates claim information.

Due to the deadline for reopenings of December 12, 2000, a record number of motions to reopen were filed. The staff of Case Files, Claims Assignment and Docket Sections were successful in the timely processing of all motions, assigning same to the motion dockets, processing the docket orders, and assignment of the reopened cases to the ALJs.

Appeals Branch

The Appeals Branch is responsible for processing records on claims appealed from ALJ decisions to the Workers' Compensation Board (WCB), the Kentucky Court of Appeals and the Kentucky Supreme Court.

Personnel assigned to the Appeals Branch work closely with the WCB members and its staff to ensure appeals are processed in a timely manner. All motions on appeals are tracked and presented to the WCB weekly for appropriate action, a database is maintained of all appellate filings and

inquiries regarding the status of active appeals are directed to the Appeals Branch.

During FY 2001, 641 ALJ decisions were appealed to the Workers' Compensation Board; 161 WCB decisions were appealed to the Court of Appeals; and 87 workers' compensation claims were appealed to the Kentucky Supreme Court.

Open Records

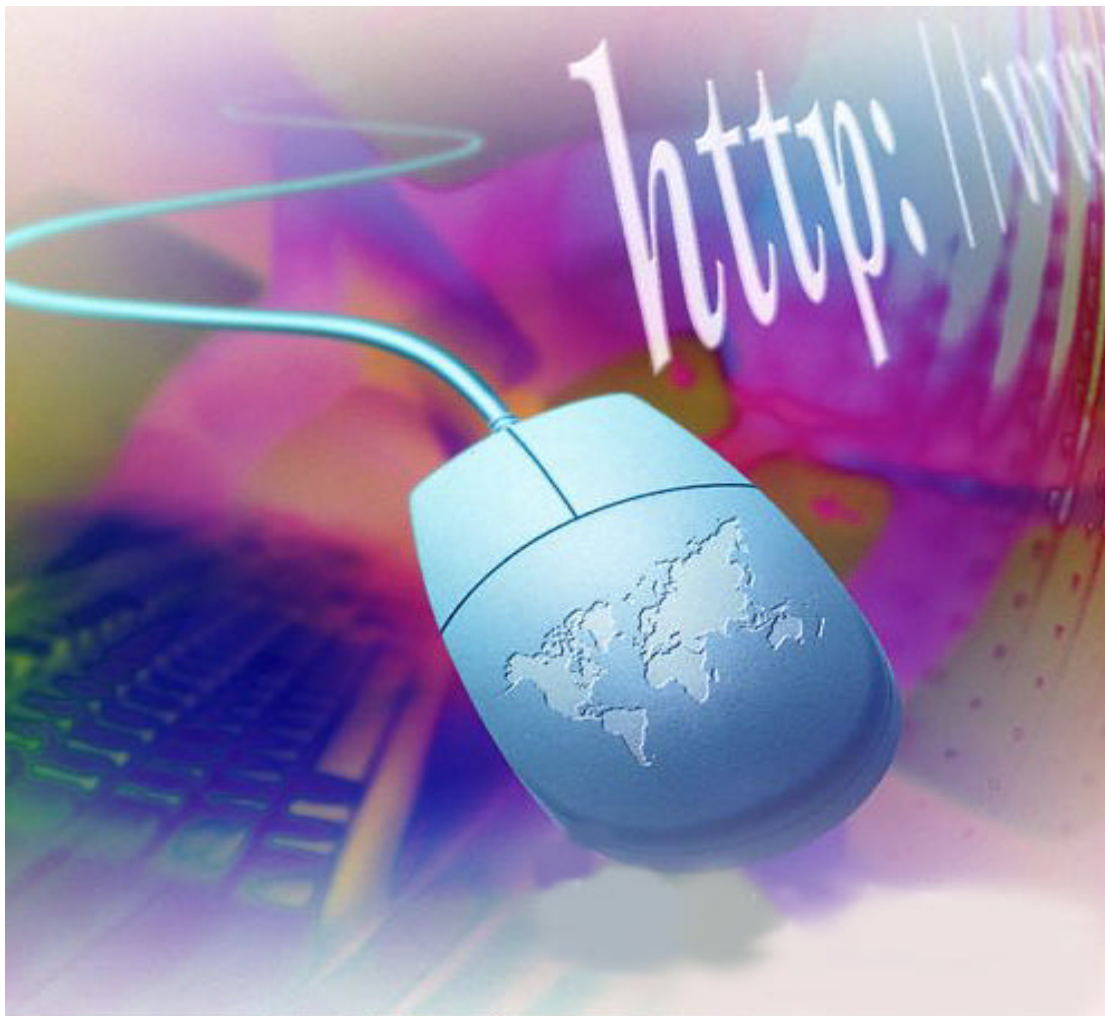
The Open Records Section responds to written requests for workers' compensation information under the Kentucky Open Records Act, KRS 61.870-884. Many of these requests are from employers inquiring about an employee's history of work related claims; 13,727 such requests were received in FY 2001.

Hundreds of additional inquiries are received from the Social Security Administration (284) and Kentucky's Department of Fish and Wildlife (186). Additionally, during FY 2001, 80 inquiries for information were presented in person.

The staff responds to thousands of requests for copies of DWC records. Charges for photocopied and microfilmed pages are modest, yet, during FY 2001, more than \$70,000 was collected in copying charges.

Pursuant to KRS 342.229, which sets out what constitutes unwarranted invasion of privacy, the DWC treats injury reports in their entirety as exempt from disclosure. Only if personal and/or private information is redacted from the records or if the injured worker has signed a release, does DWC provide information on First Reports of Injury.

Information and Research



Led by Director Deborah S. Wingate, the primary duties of this division are collection, storage and retrieval of data and dissemination of information. The Records Branch is responsible for data entry, coding and ensuring the validity and integrity of the data. The Technical Services Branch renders both hardware and software services and is responsible for the development and maintenance of DWC's data systems, including the wide area network.

Through the Benchmarking Section, the division performs critical research and publication functions. These include injury and claims data analysis and annual and quarterly reports. Through Benchmarking's report card process, insurance carrier performance is monitored, including the timely filing of first reports of injury and fatalities. This section also responds to requests for program information from legislators, government agencies and the public.

Technical Services Branch

The Technical Services Branch has accomplished the goal of networking all field offices. All Administrative Law Judges and field staff now have on line access to the department's network and to the Internet.

Technical Services staff participated in an analysis of Windows 2000 operating systems compatibility with state and in-house applications.

In preparing for the AS400 data conversion to a server based environment, Technical Services has studied the hardware and application needs, adding programming staff in the Design and Development section to provide support for all applications and data conversion needs.

In addition to the AS400 data conversion project, the Technical Services Branch remains committed to developments that will enhance the agency's ability to process and retrieve workers' claims data. Phase two of the overall enhancement project will include implementing active server pages on the department's web site. This will provide for on line filing of workers' compensation claims. DWC is also in the process of converting the current Image system from the AS400 onto a platform which will allow additional options and greater capabilities.

The DWC network has moved behind the Labor Cabinet's firewall, ensuring reliability and security to the department's network.





Electronic Data

Interchange

Insurance carriers and self-insured employers report workers' compensation activity to DWC through Electronic Data Interchange (EDI).

Introduced in 1996, EDI was initially used to transmit First Reports of Injury. Over the past several years, Subsequent Reports of Injury, Proof of Coverage and Medical Bill Reporting have been added to the list of electronic reporting.

In many cases, carriers will outsource this reporting method to *trading partners*, who must be approved by the Department of Workers' Claims.

In the past year, DWC has added 65 Proof of Coverage trading partners and 40 First and Subsequent reports of injury trading partners. In addition, DWC has approved 17 new Medical Billing trading partners, with 38 potential partners still in the testing phase.

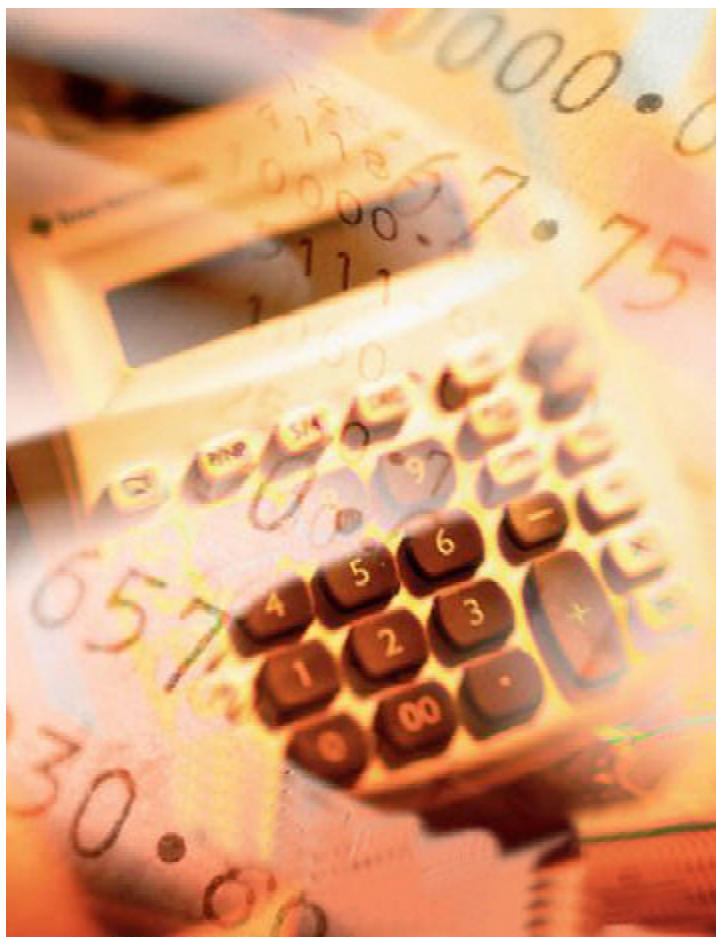
The Department of Workers' Claims has embarked on an EDI Initiative Project to refine and improve the collection capability of EDI records. DWC will be undergoing a complete re-design of the current EDI applications. The strategy of this initiative is to ensure the collection of credible, accurate data in a timely manner.

The EDI Initiative Project will include the following:

- ◆ Redesign of system hardware and EDI applications
- ◆ Additional edit checks to reduce error rates and to improve data quality
- ◆ Automation of report cards to monitor carrier performance
- ◆ Training seminars for trading partners, carriers and employers

BENCHMARKING SECTION

The Benchmarking staff conducts multifaceted, specialized industry and injury research, collecting, reviewing and comparing data relevant to workers' compensation issues and Kentucky's Department of Workers' Claims.



Data collected from First Reports of Injury, Subsequent Reports of Injury and various other DWC databases provides the statistical reports and analyses compiled by the Benchmarking staff. Quarterly activity reports and DWC's annual report to the Governor are examples of the research, analysis and compilation duties of the Benchmarking staff.

Value added research efforts extend to monitoring and evaluating program performance. Based on data elements transmitted electronically to DWC by employers and carriers, detailed reports are generated by Benchmarking staff. Designed to ensure compliance with Kentucky's reporting requirements and reveal patterns of violations, the publication of *performance report cards* represents DWC's proactive role in improving performance.

Kentucky statute holds the carrier responsible for compliance with reporting requirements. Performance report cards regarding timely filing of fatalities have been issued since 1997. Report cards are accompanied by a letter from DWC's Commissioner, stating that those in violation must provide in writing the reason for non-compliance.

In April 2001, the Department issued performance report cards to insurance carriers, a result of monitoring carriers' compliance with timely filing laws regarding on the job fatalities.

There were 70 work-related fatalities included in this report card for calendar year 2000. Less than half of the fatalities were reported to DWC according to law; 42 of the 70 were in violation. Of those 42, there were 36 who qualified for assessment of penalties. There were eight fatalities that were *never* reported to the Department and there were five instances in which there was no workers' compensation insurance coverage.

Research conducted by Benchmarking staff is also generated by requests from other divisions and agencies. Research results range from compiling industry and/or injury specific statistics to collecting information on the workers' claims process, including outcomes and timelines.

Security & Compliance



The Division of Security and Compliance, headed by Director Gary Davis, C.P.A., is responsible for ensuring that non-exempt Kentucky employers maintain workers' compensation insurance coverage. The Self-Insurance Branch audits group and individual self-insured employers and processes applications for self-insurance. The Coverage Branch maintains records documenting workers' compensation insurance coverage for Kentucky employers. The Enforcement Branch monitors Kentucky businesses to verify compliance with the Workers' Compensation Act.

Division of Security and Compliance

The Division of Security and Compliance focuses its resources on ensuring that non-exempt Kentucky employers maintain workers' compensation insurance coverage.

Self-Insurance Branch

Branch auditors utilize independent resources, including regional and national newspapers, business periodicals, Internet business sites and Dun & Bradstreet services to monitor the financial condition of self-insurers.

During FY 2001, the Department finalized the examinations on the following self-insured groups: Forest Industry Self-Insurance Fund, Associated General Contractors Self-Insurance Fund, and Cooperative Self-Insurance Fund. Examinations of the Kentucky Retail Federation and AIK-Comp were performed with the examination of Kentucky Retail Federation becoming final during FY 2001.

Conversion of self-insured group funds to fully insured products via a "loss portfolio transfer," reached its zenith in the late 1990s with the remaining group funds moving to solidify their premium base in FY 2000 and 2001. The lone exception was Workers Guardian Self-Insurance Fund. Workers Guardian, a homogenous fund focused on

the metal manufacturers of the Commonwealth, closed the fund in March 2001 and is currently in a run-off mode, exploring the benefits of a loss portfolio transfer. Fortunately, even though the industry was experiencing significant change with the group funds struggling to withstand the competition of the traditional carriers, there were no insolvencies of group self-insurance funds.

While the vast majority of Kentucky self-insured employers are financially strong, self-insured employers experiencing financial stress are placed on a "Watch-List" and monitored on a quarterly basis. "Watch-List" membership remained relatively low during FY 2001.

HB 1 (Extraordinary Session, Dec. 1996) established three guarantee associations, the Kentucky Individual Self-Insured Guaranty Fund (hereinafter Individual G.F.), the Kentucky Group Self-Insured Guaranty Fund (hereinafter the Group Fund) and the Kentucky Coal Employers Self-Insurance Guaranty Fund (hereinafter the Coal G.F.) for the purpose of protecting workers and their dependents in the event of insolvency of a self-insured. Prior to FY 2000, no insolvencies of self-insureds had impacted any of the guaranty funds.

Since fiscal year 1998, self-insurance has experienced a net reduction of 31 employers, bringing the FY 2001 total to 193 as noted below:

Fiscal Year	1998	1999	2000	2001
Companies on Watch-list	13	9	5	6
Individual Self-Insurers	224	214	201	193
Self-Insured Groups	10	10	10	9

Corporate bankruptcies in recent years have claimed the full attention of the division, as letters of credit have been called and accounting, administrative and investment procedures put into place in order to ensure future claim payments.

During FY 2001, the Guaranty Fund initiated the process of actuarially determining the value of one such bankrupt entity, Fruit of the Loom. It appears that the claims liability will be close to that estimated by DWC.

After Quaker Coal Company defaulted in payments due under the Kentucky Workers' Compensation Act, DWC entered into an agreement with the bond underwriter, Frontier Insurance and the Coal Guaranty Fund. Specifically, an imprest revolving claims account of \$1 million would be established at the Coal Guaranty Fund and reimbursed on a monthly basis. The Fund took control of the Quaker claims, contracted for services with a third party administrator and began making claim payments. Approximately \$1.5 million was paid to Quaker claimants in FY 2001.

Frontier Insurance suffered a ratings drop to 'marginal', prompting DWC to focus on obtaining substitutes for coverage previously provided by Frontier. At the close of FY 2001, DWC's efforts had met with mixed success. Lodestar Energy, self-insured at the beginning of FY 2001 provided a substitute Letter Of Credit for its Frontier Bond and obtained coverage in the

voluntary market (KEMI) on September 20, 2000. However, two coal companies, Manalapan Mining and AEI Resources, continued operating and making benefit payments while utilizing the Frontier surety totaling in excess of \$30 million.

DWC is hopeful that the recent increase in coal prices will provide the necessary resources permitting these companies to obtain other suitable surety in the near future.

Near the end of FY 2001, Lodestar Energy filed Chapter 11 bankruptcy proceedings and informed DWC that claims payments would be continued but that they would adhere to the provisions of the automatic

stay afforded by section 362 (a) of the Bankruptcy Code.



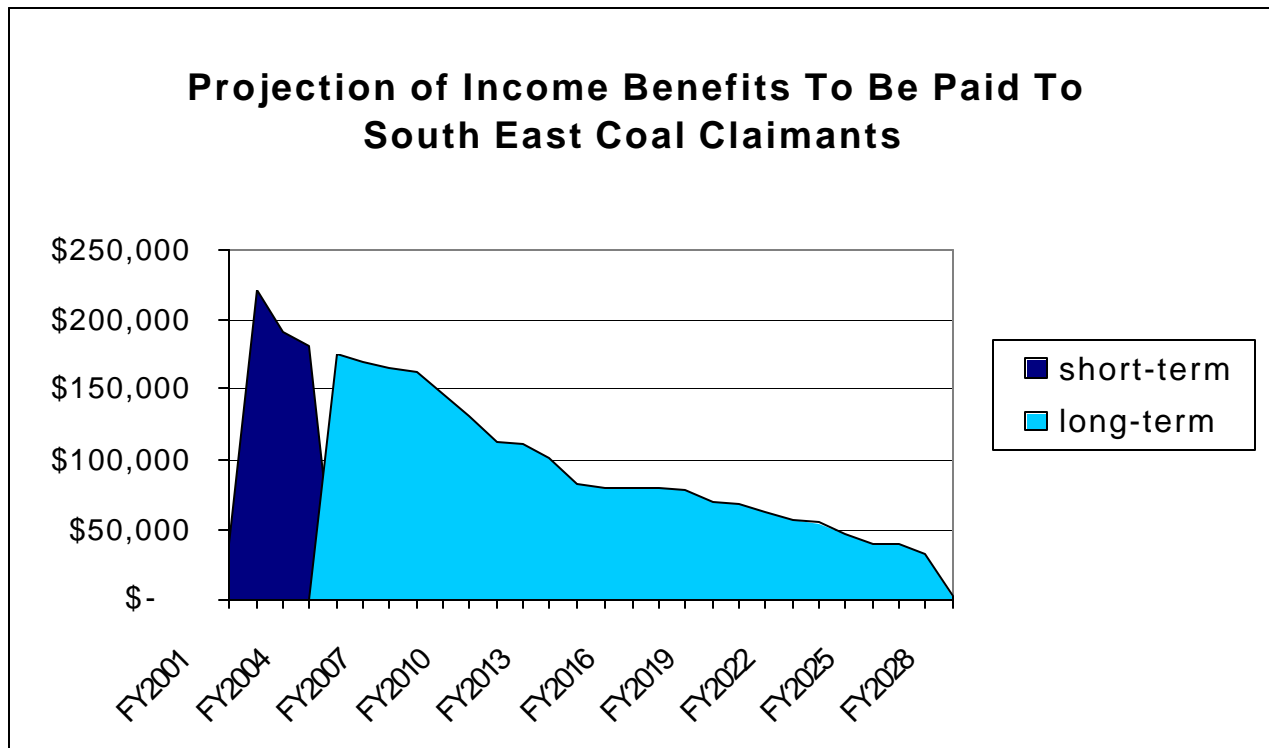
A brief interruption relative to the continued administration of claims occurred prior to Lodestar's filing of relief from the stay at the insistence of DWC.

In accordance with provisions of the order lifting the automatic stay, DWC resumed full adjudication and administration of the claims shortly after the close of the fiscal year.

SERF (South East Coal Restoration Fund)

Established to distribute workers' compensation benefits to the injured employees of bankrupt South East Coal, the South East Restoration Fund was divided into long-term and short-term investments intended to extend the period of payments to claimants.

During FY2001, the injured employees of South East Coal Company continued to receive their indemnity benefits under the South East Coal Restoration Fund (SERF). Due to a sound investment strategy employed by the Kentucky Workers' Compensation Funding Commission, the Department of Workers' Claims is hopeful that all claimants will be fully indemnified.



Coverage

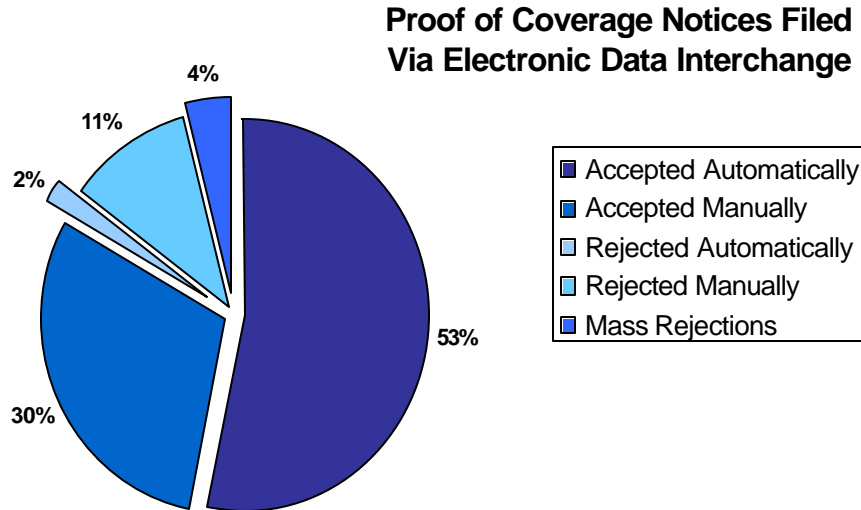
Currently, two data collection agents are approved to transmit to DWC, Claimport and Workers' COMPLINK.

KEMI, the state competitive workers' compensation fund, established a direct link to DWC and files Proof of Coverage reports without the assistance of a vendor.

Coupled with the department's purchase of a license to use an Internet-based option developed by Workers' COMPLINK that allows carriers to bypass vendors and report proof of coverage information directly to Kentucky, DWC now operates the nation's premier EDI-POC system. In almost all instances, the transfer of information and acknowledgment of proof of coverage is accomplished in three (3) working days or less.

During FY 2001, DWC continued to enjoy the benefits of the EDI-POC system enabling it to reduce staff without sacrificing quality. The Coverage Branch operates with six (6) full-time staff including the Branch Manager compared to a staff of thirteen (13) in 1998.

Furthermore, the success of direct reporting by KEMI provides encouragement that eventually all carriers of significant volume will be able to report directly to DWC, thus increasing the accuracy and ease of reporting.



Enforcement

The purchase and implementation of HP palmtop computers has enabled the compliance officers to move from a paper driven reporting mechanism to an all electronic format. Data elements are entered via touch sensitive screens and final reports are submitted electronically. The capability of recorded narratives provides additional investigative information. DWC continues to explore wireless technology opportunities within the POC program.

During FY 2001, DWC compliance officers inspected 10,248 Kentucky businesses in order to verify workers' compensation coverage.

The Commissioner issued 476 citations, assessed penalties of \$670,700 and collected fines totalling \$294,565 .

The number of employees filing notice with the Department to reject coverage under the Kentucky Workers' Compensation Act has reached its lowest point since 1987, with 6,732 on file for the fiscal year.

Constituent Services

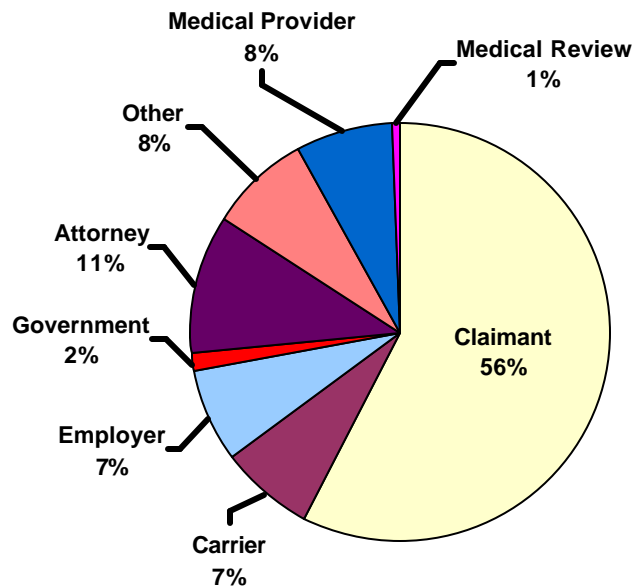


The Division of Ombudsmen and Workers' Compensation Specialist Services maintains toll free telephone lines to assist citizens in workers' compensation matters by answering questions, providing information and attempting to resolve conflicts. Mediation services are available in an attempt to speed resolution of claims and expedite the delivery of benefits to injured workers.

The Division is headed by the Honorable Cathy Costelle, Division Director, and the Honorable Andrew Manno, Chief Specialist.

During FY 2000-2001, the Division of Ombudsmen and Workers' Compensation Specialist Services continued its proactive efforts to provide assistance and information, responding to 16,939 requests. Most of these were completed within one week of the initial contact.

DIVISION OF OMBUDSMEN AND WORKERS' COMPENSATION SPECIALISTS DISTRIBUTION OF REQUESTS FOR ASSISTANCE BY SOURCE



The chart above represents the breakdown on the sources of requests. The listing below outlines the subject matter. The category 'Other' includes inquiries such as the attorney of record, the carrier/insurance agent, current mileage rate and miscellaneous questions of a general nature.

TOPICS	NUMBER OF CALLS
Rights and Procedures	10,171
Claims Status Request	2,179
Form Request	1,794
Other	1,623
Coverage	1,334
First Report of Injury	761
Medical Fee Schedule	573
Claim Filing Assistance	395
Medical Fee Dispute	212
Referrals to Outside Agencies	161
Utilization Review	143
Managed Care	141
Fraud	81
Unfair Claims Settlement Practice Investigation	68
Vocational Rehabilitation	46

Constituent Services

While specialists cannot represent claimants or appear with them at hearings, specialists assist injured workers who are not represented by an attorney in filing claim applications, and completing other forms.

In addition to providing information, ombudsmen and specialists intervened in various disputes between two or more parties within the workers' compensation system. In these interventions, DWC staff members assist the parties in reaching a resolution to the dispute by facilitating communications between the parties. Ombudsmen and specialists intervened in 2,400 disputes this year, successfully resolving a majority of them.



In May 2001, the division held an intensive two-day training session geared toward improving the overall workers' compensation knowledge of staff members. Other program areas of focus included customer service, team building, unfair claims investigations and mediation.

Managed Care

Managed care is governed by 803 KAR 25:110 and is intended to regulate costs by utilizing gate-keeper physicians, pre-certification of services, aggressive case management, and coordination of medical treatment and return-to-work policies.

There were 42 plans utilizing physicians from 16 networks in operation during FY 2001. The majority of these plans operated statewide.

There were approximately 5,428 employers enrolled in a managed care plan. The employees of these participating employers comprise approximately 22% of the workforce.

Each plan is reviewed on a quarterly basis to ensure convenient geographic accessibility to quality medical care.

Medical Evaluations

As mandated by KRS 342.315, the Department of Workers' Claims has contracted with the University of Kentucky and the University of Louisville medical schools to perform evaluations of employees with workers' compensation claims.

Occupational disease and hearing loss claims are referred for evaluations upon the filing of a claim for benefits. In injury claims, the Administrative Law Judge may order evaluations or they may be requested by the plaintiff or defendant and then referred by the Administrative Law Judge.

Examinations scheduled from July 1, 2000 - June 30, 2001:

	<u>University of Kentucky</u>	<u>University of Louisville</u>	<u>TOTAL</u>
Injury Claims	62	71	133
Hearing Loss Claims	56	38	94
Pulmonary Claims	88	68	156
Total	206	177	383

In FY 2001, the medical scheduling section of DWC received university medical reports for 152 injury claims, 90 hearing loss claims and 126 pulmonary claims.

Pulmonary claims include but are not limited to coal workers' pneumoconiosis, silicosis, asbestosis, asthma, contagious diseases, lead poisoning/liver disease and exposure to noxious fumes/chemicals.

Evaluation of the pulmonary claims revealed that 79 were coal workers' pneumoconiosis (CWP); 58 of which were determined to have negative findings. Six of the CWP claims were found to be occupationally related ; three were Class 1 CWP and three were Class 2.

Results of the evaluations on hearing loss claims revealed 51 workers with a functional impairment rating of greater than or equal to 8 percent.

Vocational Rehabilitation

KRS 342.710 provides retraining benefits for those who are unable to perform work for which they have previous training or experience, because of the effects of work related injuries. In addition to payment of direct school costs such as tuition and textbooks for a period of 52 weeks, carriers may also provide financial assistance with the costs of transportation, lodging, and meals. On a case by case basis, additional periods of training may be awarded.

Individuals have traditionally been referred to the Vocational Rehabilitation section when an award is made and the Administrative Law Judge determines a vocational evaluation is merited. Evaluations consisting of assessment of the injured employee's academic achievement levels, occupational aptitudes and interests are obtained at voc-ed facilities approved by DWC throughout the state. The Rehabilitation Supervisor then reviews the evaluation results with the injured employee and assists in determining/ selecting retraining options for a job

compatible with permanent medical restrictions.

During this fiscal year, the Vocational Rehabilitation section received 116 cases from Administrative Law Judges. 39 cases came from additional sources such as carriers and attorneys as well as self-referrals from injured employees. The total caseload of 155 was substantially below the 253 referrals received last year.

Approximately 1/3, or 38, of the injured employees referred this year by ALJs had been awarded benefits for permanent total disability. Their ages ranged from 28 to 60 with the average age 43. This group was comprised of 29 males and 9 females and the average completed years of education was 12.

The remaining 78 referrals from ALJs were awarded benefits for permanent partial disability ranging from 1.5% to 142.50%. The

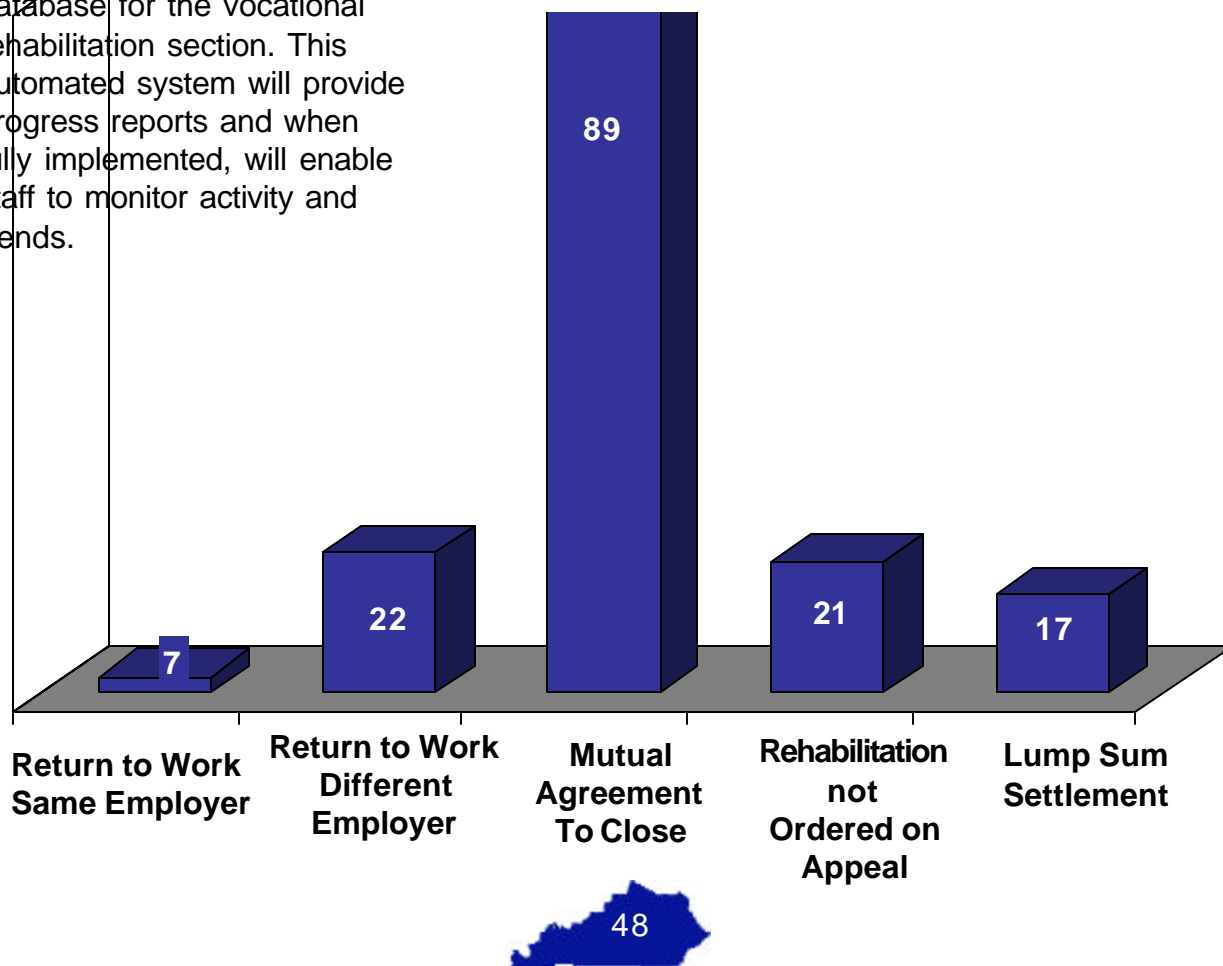
average award was for 29.23% ppd. Their ages ranged from 23 to 60 and the average age was 38.55. Comprised of 54 males and 24 females, the average completed years of school was 11.7.



Believing that vocational rehabilitation services should not have to be delayed until claims are litigated, the Commissioner wants an intense rehabilitation effort focused on seriously injured employees soon after it is recognized that, without retraining to gain new work skills, they may be unable to return to suitable employment.

Constantly reviewing opportunities for improvement, DWC has developed a new database for the vocational rehabilitation section. This automated system will provide progress reports and when fully implemented, will enable staff to monitor activity and trends.

Status of 157 Vocational Rehabilitation Cases Closed in FY 2001



WORKERS' COMPENSATION



COURT DECISIONS



City of Louisville v. Larry Slack, Ky., 39 SW3d 809 (2001)

The provision allowing the assessment of an attorney fee against the employer when the employer does not prevail on appeal was found to violate the employer's procedural due process rights. The provision violates Section 2 of the Kentucky Constitution.

McNutt Const. V. Clifford Scott, Ky., 40 SW3d 854 (2001)

The Court stated that in construing the definition of "injury", the critical question is one of causation. Although KRS 342.0011(1) clearly indicates that the effects of the natural aging process are not considered to be an "injury," it also clearly indicates that work-related trauma which is the proximate cause producing a harmful change in the human organism is an "injury." The Court concluded that where work-related trauma causes a

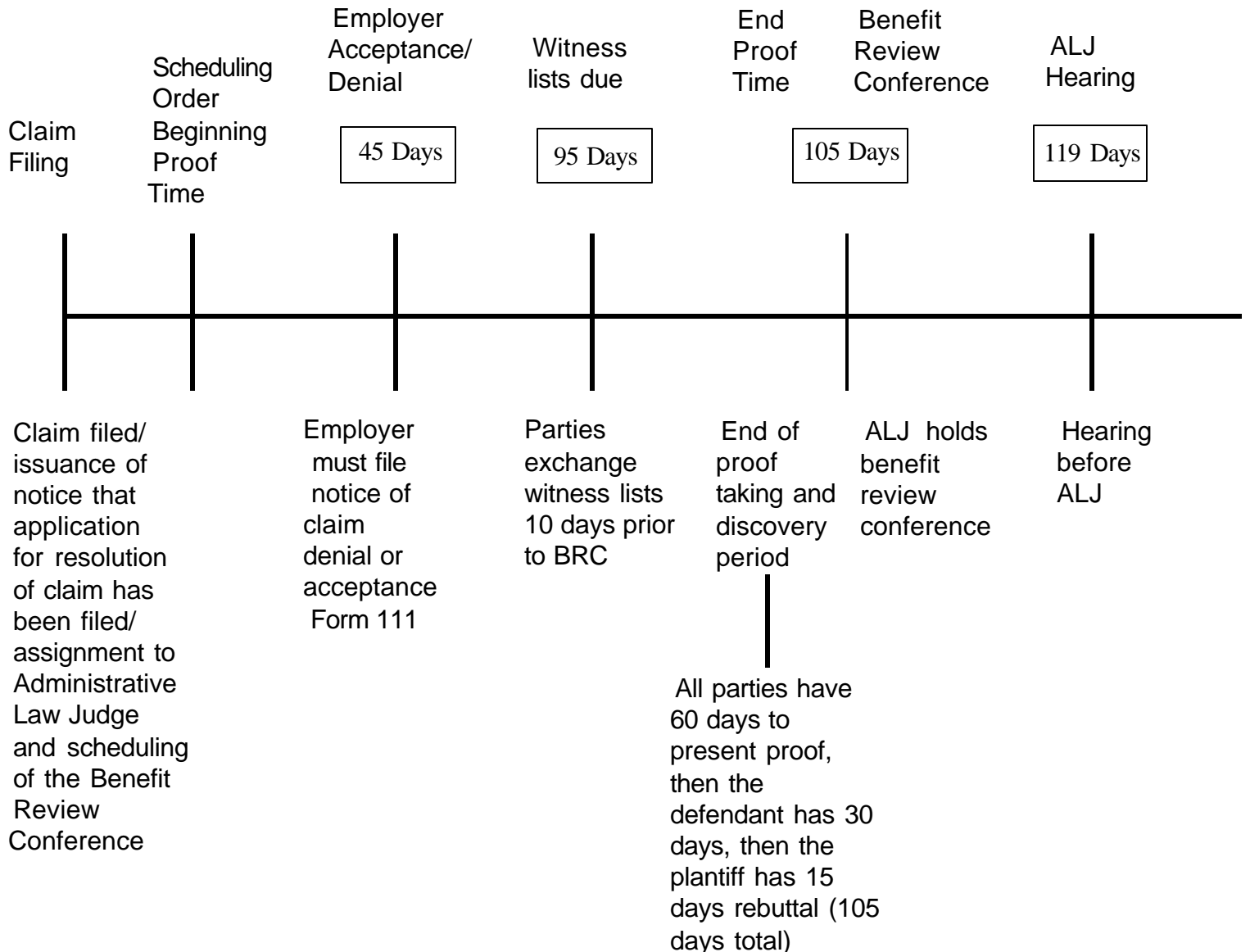
dormant degenerative condition to become disabling and to result in a functional impairment, the trauma is the proximate cause of the harmful change; hence, the harmful change comes within the definition of injury. Abolishing the Special Fund did not make the portion due to arousal noncompensable.

Kelly Gibbs v. Premier Scale, Ky., 50 SW3d 754 (2001)

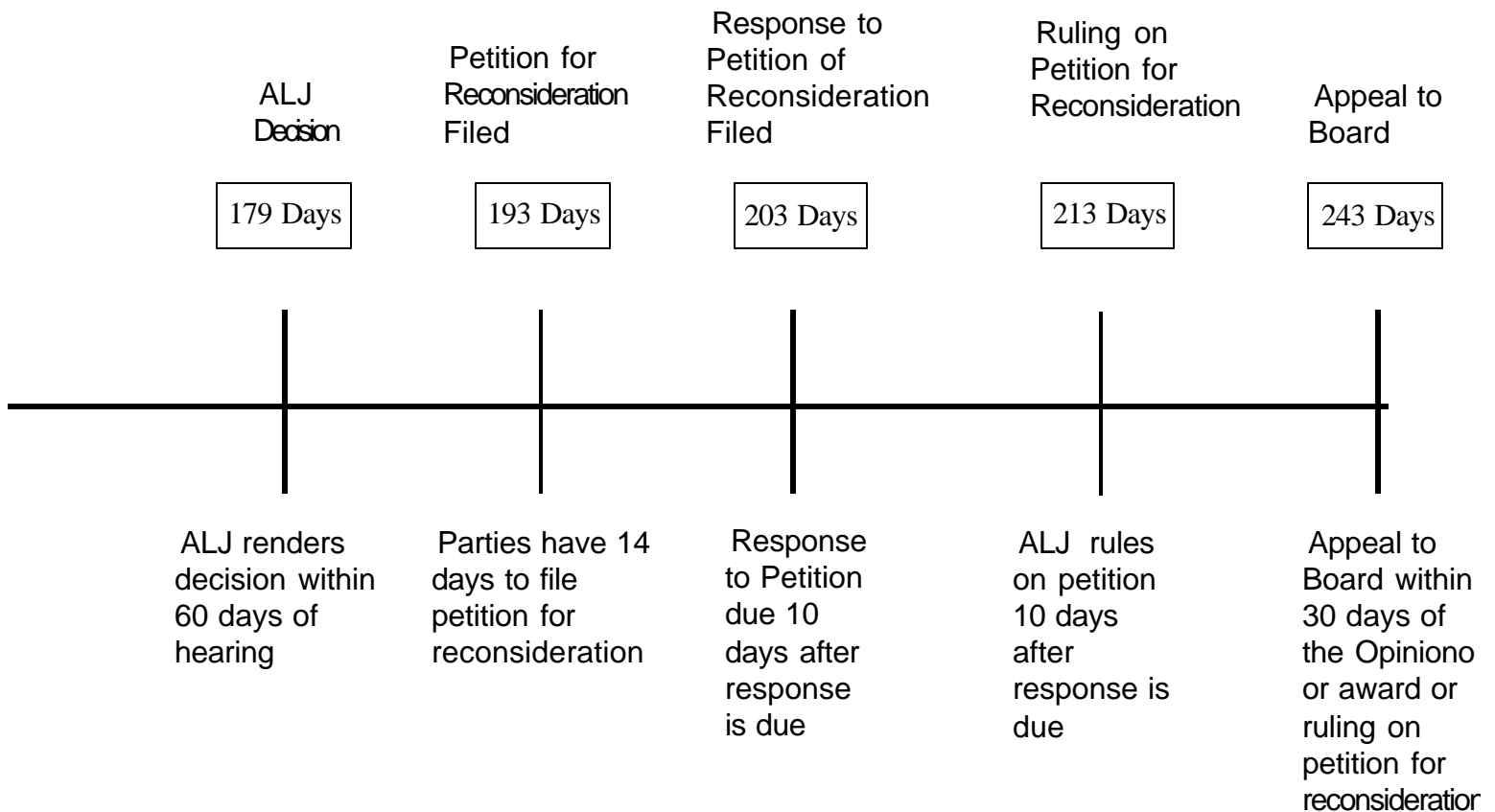
The Court concluded that while the claimant's complaints or symptoms might be sufficient for the physician to make a diagnosis, the law requires more. A diagnosis by itself is not an "objective medical finding." KRS 342.0011(1) makes it clear that not all work-related harmful changes are compensable. That section requires that the harmful change must be evidenced by objective medical findings as the term is defined in KRS 342.0011(33). "Objective medical findings" is defined as information gained through direct observation and testing of the patient applying objective or standardized methods. The existence of the harmful change may be established indirectly through information gained by direct observation and by objective or standardized methods of testing that demonstrate the existence of symptoms of such change. Where the symptoms are directly observed or confirmed by standardized methods, the requirements of KRS 342.0011(1) may be satisfied.



Kentucky Workers' Adjudication



Compensation Timeline



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* at time of publication

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